IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3146 OF 2003

Shri Bharat Urban Cooperative Bank
Ltd., Jaisingpur, Taluka Shirol,
District Kolhapur. ....Petitioner.

Versus.

1. Shri Datta Nagari Sahakari Path
Sanstha ltd., Chinchwad, Taluka
Shirol, Dist. Kolhapur,
Head Office: Sangli-Kolhapur
Road, At & Post: Jaisingpur,
Tal. Shirol, Dist.Kolhapur.

2. Shri Dinkar Bhausaheb Thorat,
Age: 42, Occ.: Agri.& Business,
At & Post: Danoli, Tal.Shirol,
Dist. Kolhapur.

3. Shri Balkrishna Annasaheb Khedekar,
Age: 44, Occ.: Agriculturist,
At & Post: Danoli, Taluka Shirol,
Dist. Kolhapur.

4. Shri Akbar Hussan Mulani,
Age: 36, Occ.: Agri.& Service,
At & Post: Danoli, Taluka:
Shirol, Dist. Kolhapur.

5. The Addl.Commissioner and
Special Registrar, Cooperative
Society Ltd., Maharashtra State,
Pune-1.

6. State of Maharashtra,
Revisional Authority,. .... Respondent.

Shri T.S.Ingle for the Petitioner.

Shri M.L.Patil for the Respondent No.1.

Shri A.H.Palekar for Respondent Nos.5 & 6

CORAM : ABHAY S. OKA, J.

DATED : 16th October, 2004.

ORAL JUDGMENT.

1. By consent of the respective learned Counsel appearing for the Petitioner, Respondent No.1 and Respondents Nos.5 and 6, the petition is taken up for final hearing.

2. The challenge in this petition is to the order dated 25th November 2002 passed by the State Government by which the Revision Application preferred by the Petitioner was not entertained by the State Government on the ground that the remedy of the Petitioner was to file a dispute under section 91 of the Maharashtra Cooperative Societies Act, 1960 (hereinafter referred to as "the said Act of 1960").

3. The Petitioner is an Urban Cooperative Bank. The case of the Petitioner is that the Respondent No.2 mortgaged his immoveable property in favour of the Petitioner as a security for repayment of loan advanced by the Petitioner to the Respondent No.2. The Petitioner-Bank obtained a certificate under section 101 of the said Act of 1960 against the Respondents Nos.2 and Respondents Nos.3 and 4 who are guarantors. The

property which was mortgaged by the Respondent No.2 in favour of the Petitioner was put to action in recovery proceedings initiated on the basis of the certificate under section 101 of the said Act of 1960. Even before the auction could be completed, the order dated 20th June 2002 came to be passed by the Respondent No.5 purporting to be an order under section 100 of the said Act of 1960. By the said order certain properties held by the borrowers of the Respondent No.1-Credit Society were ordered to be transferred in favour of the Respondent No.1 for recovery of the loan advanced by Respondent No.1. One of the properties covered by the said order is the property of Respondent No.2 in respect of which a mortgage was created in favour of the Petitioner.

4. It is this order dated 20th June 2002 passed by the Respondent No.5 which was impugned by the Petitioner by filing a Revision Application under section 154 of the said Act of 1960.

5. Shri Ingale, the learned Counsel for the Petitioner submitted that the Revision Application ought to have been heard by the Respondent No.6 on merits. He submitted that as challenge in the Revision Application was to the order passed by the Respondent No.5 under the

provisions of section 100 of the said Act of 1960, remedy of filing a dispute under section 91 of the said Act of 1960 was not available and therefore, Revision Application could not have been rejected on the ground that the Petitioner can avail of remedy under section 91 of the said Act of 1960.

6. Shri M.L.Patil, the learned Counsel appearing for the Respondent No.1 supported the impugned order and the learned A.G.P. also supported the impugned order.

7. After hearing the learned Counsel appearing for the parties, I am of the opinion that the order impugned is wholly unsustainable. The challenge in the Revision Application preferred by the Petitioner was to an order passed by Respondent No.5 under section 100 of the said Act of 1960. Obviously the Petitioner could not have challenged the said order by availing of remedy of filing a dispute under section 91 of the said Act of 1960. The State Government has refused to entertain the Revision Application only on the ground that the remedy of approaching the Cooperative Court under section 91 was available to the Petitioner.

8. In the circumstances, the impugned order dated 25th November 2002 deserves to be quashed and set aside and

the Revision Application preferred by the Petitioner deserves to be remanded to the State Government.

9. Hence the following order:

(i) Order dated 25th November 2002 passed by the Respondent No.6 (Exh.F) is quashed and set aside.

(ii) The Revision application preferred by the Petitioner (Exh.E) is remanded to the Respondent No.6 for hearing the same afresh in accordance with the law in the light of the finding recorded in paragraph No.7 above.

(iii) The Respondent No.6 will hear the Revision Application on merits as expeditiously as possible and in any event within a period of six months from the date of production of authenticated copy of this order.

(iv) All contentions on merits are kept expressly open.

(v) Ad-interim order passed by this Court on 30th April 2003 will continue to operate till disposal of the Revision Application before the Respondent No.6 and for a period of 15 days from the date of communication of the order passed in the Revision Application to the Petitioner.

(vi) Rule is made absolute in the above terms.

(vii) The Authorities below and the parties to act on authenticated copy of this order.

Judge.